As germane to the subject under consideration, it may be suggested that it is undoubtedly the law that if the passenger room of a railroad company is an unfit place for its patrons by reason of its foul or uncomfortable condition, a person, while waiting for a train, may leave the place and go elsewhere on the company's premises without that fact affecting his right of action against the company in case of accident, through the fault of the company, while the party is going elsewhere, provided that in so going he uses proper care and does not violate some rule of the company of which he has actual knowledge or which, as a reasonable man, he would be bound to know existed. This proposition is clearly recognized by the Supreme Court of Iowa in *McDonald* v. *Chicago and Northwestern R. R. Co.*, 26 Iowa, 124. The action was brought for damages sustained by a person who, while waiting for a train, left the passenger room, which was in an offensive condition by reason of tobacco smoke, and endeavored to enter the train, while it was standing at some distance from the regular place for receiving passengers, and in so doing was thrown down by a loose plank in the platform steps and seriously injured. In delivering the opinion of the court, DILLON, Ch. J., said: "That, without any statute enacting it, there is a common law duty on these companies to provide reasonable accommodations at stations for passengers who are invited and expected to travel on their roads. See *Caterham R. R. Co.* v. *London R. R. Co.*, 87 Eng. C. L. 410. If the station room is full, or if it is intolerably offensive, by reason of tobacco smoke, so that a passenger has good reason for not remaining there, while this will not justify him in violating reasonable rules and regulations of the company, which are known to him, respecting the place, mode and time of entering the cars, it will justify his endeavor to enter the cars at as early a period as possible, especially if it is dark and cold without, if in so doing he uses proper care and violates no rule or regulation of the company of which he has actual knowledge, or which, as a reasonable man, he would be bound to presume existed. He would not, of course, be justified, by the condition of the passenger room, in rashly endeavoring to board a train in motion, or the like; but if the train had arrived, was on the track, the car doors open, and if, as is frequently if not generally the case, passengers are allowed, or at least not forbidden, to enter the cars before they are drawn up in front of the station, we think a passenger may reasonably and properly make the attempt to reach and enter the cars, if he is not aware of any rule or regulation to the contrary; and if he receives an injury in so doing (he using proper care) from the unsafe and dangerous condition of the platform or the steps in a place where passengers would naturally go, the company are liable therefor." It should be noted that while the judgment below for the plaintiff was reversed by the court for error not affecting the question under consideration, a second judgment in plaintiff's favor was affirmed in 29 Iowa, 170. H. B. H.

SPECIAL ASSESSMENTS AND RAILROAD RIGHTS OF WAY.—Taxation through special assessments, whereby public improvements are made at the expense of a limited number of individual property owners, was at one time severely criticised and often disapproved. Levies of this nature were tolerated by

the courts only on the ground that the improvements were of some special benefit to the property upon which the burden of payment fell. And this is the idea which underlies local assessments today. Justice COOLEY speaks of them as differing from the usual burden of taxation imposed for state and municipal purposes in that they do not exact contribution in return for the general benefits of government, but, "in addition to the general levy they demand that special contribution in consideration of the special benefit shall be made by the persons receiving it. The justice of demanding the special contribution is supposed to be evident in the fact that the persons who are to make it, while they are made to bear the cost of a public work, are at the same time to suffer no pecuniary loss thereby, their property being increased in value by the expenditure to an amount at least equal to the sum they are required to pay." These considerations usually control when the assessments are for street improvements and fall upon private parties, but there is a pronounced tendency to depart from the rule requiring benefits both in the statutes and in judicial construction. Where the levy is made upon a railroad right of way abutting upon a street to be improved the departure is pronounced.

The question has been recently considered by the Supreme Court of Washington in the case of *Northern Pacific Ry. Co.* v. *City of Seattle* (1907), — Wash. —, 91 Pac. Rep. 244.

The statutes of the State of Washington grant to the councils of cities of the first class the power to determine what property will be benefited by street improvements and to assess it therefor. The city of Seattle, for the construction of a sidewalk, levied such an assessment, according to frontage, upon the abutting right of way of the defendant railway company. This right of way, from 60 to 100 feet in width, carried a single track and was used for no other purpose, being otherwise vacant and unimproved. The defendant contended that there was no benefit conferred sufficient to support the special assessment. The court held that the determination by the city council as to what property would be benefited by the improvement was legislative in its nature and, having been delegated to the municipal authorities, their decision was final, in the absence of fraud or oppression. They also held that the absence of any special benefit conferred upon the railroad property did not relieve it from its burden under the assessment.

It is probable that the benefits here conferred upon the railroad did not equal in value the assessment imposed, but the holding of the court that the decision of the council was final represents the weight of modern authority. On the question of benefits to the railroad, while the case may not be in accord with a majority of the authorities, it undoubtedly represents the modern tendency. In general, the validity of these special assessments still must depend upon benefits conferred upon the property taxed. This has been spoken of as the "true and only just foundation" upon which such levies could rest, and so the rule is stated in all text books and in a majority of decisions. In the absence of legislation to the contrary and where the property is in the hands of private individuals, this rule is followed with but

little dissent. Benefit to the property at least equal to the amount of the tax is generally required, and if the benefit be present the property would seem to be liable even though devoted to church or philanthropic purposes. *Atlanta* v. *Hamlein,* 96 Ga. 381; *City of Chicago* v. *Adcock,* 168 Ill. 221; *Adams* v. *Shelbyville,* 154 Ind. 467; *James* v. *City of Louisville,* 19 Ky. Law Rep. 447, 40 S. W. 912; *Dyer* v. *Farmington Village Corp.,* 70 Maine, 515; *Baltimore* v. *Johns Hopkins Hospital,* 56 Md. 1; *Sears* v. *Street Com'rs of Boston,* 173 Mass. 350; *Macon* v. *Patty,* 57 Miss. 378; *Hanscombe* v. *Omaha,* 11 Neb. 37; *Rosell* v. *Neptune City,* 68 N. J. L., 509; *Chamberlain* v. *Cleveland,* 34 Ohio St. 551; *Hammett* v. *Philadelphia,* 65 Pa. 146; *Hutcheson* v. *Storrie,* 92 Tex. 684; *Barnes* v. *Dyer,* 56 Vt. 469. The constitutions of many states either expressly or by implication forbid assessments of this character in the absence of benefits conferred. In others the same result is reached through statutes. But a tendency to depart from the strict requirements of the rule is noticeable, even where the property is owned by private parties. Some courts, apparently, would impose the liability wherever it is possible. *Chicago, M. & St. P. Ry. Co.* v. *Phillips,* 111 Ia. 377; *Bullitt* v. *Selvage,* 47 S. W. 255 (Ky. 1898); *McQuiddy* v. *Smith,* 67 Mo. App. 205; *Rolph* v. *City of Fargo,* 7 N. D. 640.

The sharp conflict, however, appears when these levies are made upon a railroad right of way. When the streets to be improved are adjacent to depots, warehouses or even freight yards there can be but little question. The railroad derives as much benefit as any other property owner. Sewers, too, are usually beneficial even if they only help drain a right of way. But paving a street or sidewalk which crosses or parallels the road-bed presents a different question. If the rule of the text books is followed railroads will escape all liability for such improvements. This was the case in most of the old decisions and is the law in a majority of the courts today. In *Village of River Forest* v. *Chicago & N. W. Co.,* 197 Ill. 344, the leading case on this side of the conflict, future probable benefits were held not to supply the absence of present benefits. *Kansas City, P. & G. Ry. Co.* v. *Board of Waterworks Imp. Dist. No. 1,* 68 Ark. 376; *Naugatuck R. Co.* v. *City of Waterbury,* 78 Conn. 193; *Village of River Forest* v. *Chicago & N. W. Co.,* 197 Ill. 344; *Chicago, R. I. & P. R. Co.* v. *Ottumwa,* 112 Ia. 300; *City of Boston* v. *Boston & A. R. Co.* 170 Mass. 95; *Detroit, G. H. & M. Ry. Co.* v. *City of Grand Rapids,* 106 Mich. 13; *St. Paul & Pac. R. R. Co.* v. *St. Paul,* 21 Minn. 526; *State* v. *Elizabeth,* 8 Vroom, 330; *Erie R. Co.* v. *Patterson,* 72 N. J. L., 83; *In re Commissioners of Public Parks,* 47 Hun 302; *Junction R. Co.* v. *City of Philadelphia,* 88 Pa. 424; *Borough of Mt. Pleasant* v. *B. & O. R. Co.,* 138 Pa. 365; *City of Allegheny* v. *Western Penn. R. Co.,* 138 Pa. 375; *Chicago, M. & St. P. R. Co.* v. *Milwaukee,* 89 Wis. 506. The conflict and the nature of the struggle to hold the railroads liable in the absence of benefits may be seen by comparing the following cases with those from the same states cited above. *Chicago, R. I. & P. R. Co.* v. *City of Moline,* 158 Ill. 64; *Illinois Cent. R. Co.* v. *City of Kankakee,* 164 Ill. 608; *Chicago & N. W. Ry. Co.* v. *Village of Elmhurst,* 165 Ill. 148; *Muscatine* v. *Chicago,*

R. I. & P. R. Co., 79 Iowa, 645; *Minneapolis & St. L. R. Co.* v. *Lindquist*, 119 Iowa, 144; *In re Assessment for Grading Prior Ave.*, 71 N. W. Rep. 27 (Minn., 1897); *State* v. *Passaic*, 54 N. J. L. 340. That there is a lack of complete harmony here in the courts of the same state cannot be denied. Iowa appears to have wavered and the Illinois cases do not go as far in their adherence to the rule as does the later case of *Village of River Forest* v. *Chicago & N. W. Co.*, 197 Ill. 344. Statutes, special taxes and particular charter provisions account for much apparent conflict but the fact nevertheless remains that the courts, even of those states which follow the rule of benefits, will hold a railroad liable if possible.

The first serious inroads were made upon the rule when assessments according to foot frontage were held constitutional and valid. It had required a hard fight to establish the constitutionality of special assessments in the first place and levies according to frontage met with even more bitter opposition. They were finally sustained as the most just and reasonable method of apportioning the burden in urban communities and their validity is now generally recognized. The corrollary to this proposition, that the legislature can grant to municipal governing bodies the power to determine what property is benefited by a proposed improvement and to assess it according to frontage, soon followed. Their decision, being legislative in nature, is now generally held conclusive in the absence of fraud or oppression. Statutes and the levying of a special tax, instead of the regular assessment, upon railroad rights of way for improvements show the strength of the present tendency. *Chicago, R. I. & P. R. Co.* v. *City of Moline*, supra. But its scope and extent are best seen in the decisions from those states in which the strict rule is not followed, at least with respect to railroad rights of way. That benefits conferred are not essential to the validity of these levies is becoming more and more the usual holding. The cases last cited with the following are in accord with the principal case: *North Beach & M. R. R. Co.'s Appeal*, 32 Cal. 499; *South Park Comr's* v. *Ry. Co.*, 107 Ill. 105; *Peru & I. R. R. Co.* v. *Hanna*, 68 Ind. 562; *Pittsburg, C. C. & St. L. Ry. Co.* v. *Taber*, 77 N. E. Rep. 741 (Ind. 1906); *Atchison, T. & S. F. R. Co.* v. *Peterson*, 58 Kan. 818, 51 Pac. Rep. 290; *Figg* v. *Louisville & N. R. Co.*, 25 Ky. Law Rep. 350; *No. Ind. R. R. Co.* v. *Connelly*, 10 Ohio St. 160; *Winona & St. P. R. Co.* v. *Watertown*, 1 S. Dak. 46; *Illinois Cent. R. Co.* v. *Decatur*, 147 U. S. 190; *Norwood* v. *Baker*, 172 U. S. 269; *Wright* v. *Davidson*, 181 U. S. 371; *Louisville & N. R. Co.* v. *Barber Asphalt Pav. Co.*, 197 U. S. 430, 25 Sup. Ct. 466. The Supreme Court of the United States in the case of *Norwood* v. *Baker*, supra, held benefits to the property essential to the validity of the levy, but later cases limit the doctrine and are in harmony with the tendency in the state courts. Keeping in mind the nature of this species of taxation it is difficult, upon principle, to uphold it in the absence of special benefits, but principle appears to have yielded to necessity. For a general treatment of special assessments see II MICHIGAN LAW REVIEW, 453.

F. B. F.